

**Cattle and Horse Grazing
near Choelquoit Lake**

Complaint Investigation 020432



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FPB/IRC/93

September 2003

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The Investigation

The Complaint

On November 21, 2002, a guide outfitter (the complainant) asked the Board to investigate several range use issues on the Choelquoit range, south of Alexis Creek near Chilko Lake. The complainant asserted that the Ministry of Forests (MOF) wrongly believed that, in 2001, the complainant's horses overgrazed a pasture when cattle belonging to adjacent licensees were responsible for the alleged overgrazing. The complainant asserts that the adjacent licensees allowed cattle to trespass onto the overgrazed pasture because they did not maintain fences between adjacent pastures, as required in their range use plan. The complainant also asserted that MOF knew about the trespassing cattle, but did not enforce the requirements of the licensees' range use plan or the *Forest Practices Code of British Columbia Act* and related regulations (the Code).

The Board investigated whether grazing and range practices complied with the Code, and whether the requirements of the range use plan were appropriately enforced by MOF.

Background

The complainant owns and operates a guiding operation catering to horseback riders, anglers and hunters. The Choelquoit range is beside Choelquoit Lake, approximately 100 kilometres southwest of Alexis Creek near the north end of Chilko Lake.

The Choelquoit range covers 176 square kilometres and is administered as four pastures. In 1999, the previous tenure holder surrendered the grazing permits for the area, and there are many individuals interested in obtaining long-term grazing tenures on the four pastures. The complainant is seeking long-term tenure over one of the four, called pasture 3, for grazing her horses. Pasture 3 is relatively small, at 15,800 hectares of upland semi-forested grassland alongside Choelquoit Lake. Pasture 3 includes a graveyard adjacent to a scenic meadow. The graveyard meadow covers about 35 hectares.

The Chilcotin Forest District allocated temporary permits for vacant grazing opportunities while the process of permanently allocating the range was underway. In 2001, the complainant applied for a temporary permit to graze horses on pasture 3. On March 27, 2001, the district manager refused to issue a permit for several reasons. Trail rider safety was the key concern. After considering additional information provided by the complainant, the district manager changed his mind and decided to issue a temporary permit. MOF also issued temporary permits for the other three pastures to two cattle ranchers (the licensees). The temporary permits were for one year only, with no guarantee of renewal.

During the 2001 grazing season, cattle from adjacent pastures were getting into pasture 3, even though the complainant and the licensees were required to maintain fences between the pastures.

On March 5, 2002, the district manager notified the complainant that he would not issue a temporary permit for 2002. He had concerns about concentration of grazing in 2001 on the graveyard meadow, and about safety of local trail riders. The complainant asserted that this decision was flawed because cattle, not horses, had done the overgrazing. Concurrently, the complainant learned that temporary permits were re-issued to the adjacent licensees.

The complainant wrote to the district manager on March 19, 2002. On April 24, 2002, the district manager reconsidered his decision in light of more information and a meeting he had with the complainant. He still refused to allow her horses in pasture 3, but offered the complainant a temporary grazing permit on pasture 4. The complainant declined because pasture 4 did not meet her operational needs.

On May 14, 2002, the complainant and MOF staff—including the district manager—visited pastures 3 and 4. On May 17, 2002, the district manager affirmed his earlier decision not to issue a temporary permit for pasture 3 to the complainant.

Issues

Temporary range permits are issued subject to range use plans that include goals, objectives, strategies, and management practices for the area under permit. District managers provide those goals, objectives and strategies.

The Board reviewed the complainant's and the licensees' range use plans to answer the following questions:

- Did grazing and range practices comply with the range use plans?
- Were the requirements of the range use plan appropriately enforced by MOF?

Discussion

Did grazing and range practices comply with the range use plans?

The complainant's and the licensees' range use plans both contained fence maintenance requirements and grazing schedules. Grazing schedules regulate the number of livestock and the location and timing of grazing in the permit areas.

The Board examined the licensees' and the complainant's compliance with range use plans to determine whether livestock trespassed, whether fences were maintained and whether pasture 3 was overgrazed. The Board also examined when the licensees and the complainant began grazing. Trespass, in terms of grazing, can occur both if livestock graze in the wrong

location (in areas where they were not authorized) and if they graze at the wrong time (during dates that were not authorized).

Did livestock graze Crown range during the wrong times?

Section 27 of the Code requires that a person with a range permit have an approved range use plan before grazing livestock. Section 98 of the Code states that a person must not allow livestock to graze on Crown range unless the person has a licence authorized under the *Range Act*, and is acting in accordance with a range use plan.

In terms of authorized dates, the licensees' range use plan was approved on June 27, 2001, although their grazing licences had been approved on May 18, 2001, and cattle were on the range by May 20. Similarly, the complainant's range use plan was approved on June 4, 2001, and her grazing licence on June 25, although her horses were already on the range by May 21. MOF did not send the grazing licences and range use plans to the licensees and complainant until August 21, 2001.

The Board finds that none of the licensees complied with section 27 of the Code. They allowed their cattle to graze before the district manager approved the range use plan. The Board also finds that the complainant did not comply with section 98 of the Code, because she allowed her horses to graze before her grazing licence was approved. However, MOF staff gave oral approval for all of the grazing and assessed the range on-site prior to allowing grazing. Therefore, the Board concludes that both instances of non-compliance were not significant.

Did cattle graze in the wrong location?

The complainant asserts that the adjacent licensees did not comply with their range use plan because they let their cattle trespass into pasture 3. The complainant reports that cattle trespassed into pasture 3 in 2001 as follows:

<u>Date</u>	<u>Number of Cattle</u>
May 21 – June 17	14
June 17 – June 30	28 – 54
July 19 – 27	50 – 100
Aug 1 – Sept 15	11
Sept 15 – Oct 28	50 – 100

The licensees responded that, although some of their cattle were on pasture 3, the number of cattle was exaggerated and the reported dates were wrong. In any event, the licensees' range use plan specifically allowed 160 cows plus calves and 8 bulls to move through pasture 3 between July 26 and August 1.

MOF recorded 14 cows belonging to the adjacent licensees in pasture 3 on June 25, 19 cow/calf pairs and one bull on July 18, and 28 cow/calf pairs and one bull on July 30. MOF noted the trespass, but did not note any environmental damage caused by the trespass.

On April 23, 2001, MOF told the complainant that she could use pasture 3 for one year while MOF would evaluate the impact of the horse use on the plant communities. Keeping the cattle out of pasture 3 was necessary to properly evaluate the horse use.

The licensees don't deny that cattle were in pasture 3. MOF also confirmed that the licensees' cattle were in pasture 3. Therefore, the Board accepts that cattle were in pasture 3, contrary to the licensees' range use plan, on at least six occasions. The licensees did not comply with section 98 of the Code on those six occasions. While the presence of cattle on pasture 3 did not cause significant environmental damage, it did make the evaluation of horse grazing impractical.

Were fences maintained according to the range use plans?

The complainant asserted that the adjacent licensees did not comply with their range use plans because they failed to maintain fences between pastures 2 and 3.

Both the complainant's and licensees' range use plans stated that, where a fence separated two agreement holders, each tenure holder was responsible for one half of the maintenance costs, unless otherwise agreed to in writing by the parties and the district manager. Without such an agreement, the complainant and the licensee were jointly responsible for maintaining the shared fences around pasture 3. The range use plans also stated that fences had to be maintained to a level that ensured that cattle were contained, and that cattleguards were to be cleaned and maintained.

MOF decided to assign the maintenance of specific fences to the complainant and the two licensees to simplify their respective obligations. MOF staff telephoned the complainant on May 16, 2001, and told her she was solely responsible for maintaining a fence from the private grazing lease at the corrals, to the main road over to the Chilko River. This fence system separates pasture 3 from pastures 1 and 4. The portion of fence separating pasture 3 from pasture 4 was over 40 years old, an ad hoc combination of Russell and wire fencing. MOF staff did not expect that the fence would be re-built for the one-year temporary permit, but did expect basic maintenance. MOF staff also telephoned and e-mailed the adjacent licensees, telling them they were responsible for maintaining the other fences. This included a relatively new wire fence separating pastures 2 and 3, which had been installed by MOF in 1998. MOF did not formalize the arrangements by amending the range use plan, nor did the district manager sign an agreement to this effect; it was all done by telephone and e-mail.

Beginning May 20, 2001, cattle were getting into pasture 3. Both the licensees and the complainant did some fence repairs. Both also called MOF to complain about each other's lack of effective fence maintenance. In response, MOF directed the complainant and the licensees to maintain their respective fences and then visited the site. By the end of June, the complainant,

licensees and MOF confirmed that cattle were getting into pasture 3, by walking across a gravel-filled cattle guard on the main road. On April 17, 2001, the licensee wrote the Ministry of Transportation (MOT) asking that the cattle guards be cleaned and on June 26, 2001, MOF made the same request. MOT promised to clean the cattle guards on July 3, 2001, but it remains unclear when the cattle guards were actually cleaned and whether they soon refilled with gravel. In any event, cattle continued to trespass into pasture 3 through the rest of the summer.

On July 31, 2001, MOF inspected the Choelquoit range and noted that the fence from the cattle guard to the eastern end of Choelquoit Lake needed several panels added between pastures 3 and 4. The fence had to be extended into the lake, as the water had receded and cattle were able to walk around it. MOF informed the complainant, who added five panels of fencing on August 21, 2001. However, the complainant contended that the fence separating pastures 2 and 3 likely also needed extension because the lake level had dropped. She asserted that the licensees failed to maintain that fence, allowing cattle to trespass from pasture 2.

The Board finds that the licensees and the complainant undertook fence maintenance and generally did so according to the divided responsibility specified by MOF staff. Nevertheless, some cattle continued to trespass into pasture 3 throughout the grazing season. Although the Board concludes that the licensees and the complainant did not comply with the approved range use plans because fences were not maintained in a condition to contain livestock, the Board cannot determine exactly which fence or combination of fences was the problem. Contributing to the non-compliance was the advanced age of one of the fences, the condition of the cattle guards and the fluctuating level of Choelquoit Lake.

Was the graveyard meadow overgrazed?

The complainant said MOF wrongly believed her horses had overgrazed the graveyard meadow portion of pasture 3 in 2001. The complainant believes the licensees' cattle were responsible for any overgrazing. The Board examined whether the complainant complied with the grazing level objectives of the range use plan.

The complainant's range use plan stated that the grazing schedule was designed to achieve desired plant communities in areas that had been significantly affected by livestock use. Use was limited to 50 percent of the annual growth for grasses/sedges and 10 percent for browse. The grazing schedule allowed for 35 horses on the range from May 15 to November 30. The range use plan required that salt be kept at least 400 metres away from open grasslands and riparian areas (watering sites, streams, ponds, lakes and meadows) wherever possible. The plan stated that it was the complainant's responsibility to move livestock within the area as necessary to achieve the prescribed level of use.

MOF staff were on site at least three times during the summer, on June 25, July 18 and July 30. MOF noted that the amount of grazing around the lake indicated that horses had apparently concentrated around the graveyard meadow throughout the season. They noted that the horses had not been moved to make uniform use of the entire pasture. As well, MOF concluded that

both horses and cattle had grazed the meadow, noting that cattle trespass had been "far too common" during the season. The complainant, however, maintained that her horses had been dispersed over the entire pasture.

MOF staff was also concerned with the effect of the complainant placing a salt block at the graveyard meadow. MOF asked that the salt block be moved so as not to encourage horses to stay in that area. The complainant maintains that she twice moved the salt as directed. On August 30, 2001, MOF examined pasture 3 and noted that the graveyard meadow had been used moderately overall, with localized pockets of overgrazing.

On March 5, 2002, the district manager notified the complainant that he had decided not to issue a temporary permit for pasture 3 in 2002. The district manager listed four factors, emphasizing concerns with concentration of grazing in 2001 on the graveyard meadow and concerns that the complainant's horses pose a safety hazard to trail riders.

Although the Board does not have jurisdiction under the Code to investigate permit allocations under the *Range Act*, the district manager's reasoning does relate to range practices that are within the Board's jurisdiction. The district manager informed the complainant that: "Our experience during the 2001 grazing season indicated that horse grazing was concentrated on one meadow despite your commitment to ensure grazing was uniformly distributed over the agreement area; consequently, this meadow was overgrazed."

On May 14, 2002, the complainant and MOF staff—including the district manager—went to pastures 3 and 4 and discussed the issues. A regional MOF agrologist was there as well. He noted that the vegetation had been used heavily in the past, and that the current vegetation varied from good to poor condition. However, the state of the current vegetation reflected sustained historical cattle use, not the 2001 grazing. He concluded that the 2001 grazing had resulted in overuse of the graveyard meadow; in particular, the south end closest to the road. Use on the upland areas seemed low. The agrologist concluded that horses generally would be able to graze the area without causing further range deterioration, as long as they were monitored and as long as no salt was placed on any meadow areas. However, to speed range recovery from the heavy grazing in the past and to improve the localized areas in poor condition, the agrologist recommended that the area be rested for a few years.

For compliance monitoring purposes, grazing is evaluated over an entire pasture unless the range use plan identifies specific areas that may be significantly affected by livestock, and contains specific measures in the grazing schedule to mitigate potential impacts on such defined areas. In this case, the localized overuse did not constitute significant non-compliance. The MOF agrologist commented that horses could graze the pasture in the future, subject to conditions, without causing further deterioration. In addition, pasture 3 was temporarily excluded from grazing in 2002, so the vegetation had a season to improve from the historical cattle use. In that context, localized overuse in 2001 was not significant.

With the trespass, cattle and horses both grazed pasture 3 in 2001. MOF inspections noted medium levels of range use with spots of overgrazing on pasture 3. MOF observed horses congregating on the graveyard meadow and were concerned with associated impacts. Although there was overgrazing in spots, the level of use over the entire range in 2001 was consistent with the range use plan. The Board therefore finds the complainant substantially complied with the grazing requirements of the range use plan and therefore section 98 of the Code.

Were the requirements of the range use plan enforced?

The complainant asserted that MOF knew the adjacent licensees did not comply with the Code, but did not undertake any enforcement.

The purpose of enforcement is to promote compliance with the Code and to prevent damage to range resources. Enforcement activities generally begin with monitoring and inspections. If problems are discovered, there are a number of tools available to the ministry to promote compliance. These tools escalate in severity through written instructions, stop-work orders, administrative penalties, prosecution, and licence cancellation. Field inspections and monitoring are the most common activities in the ministry's enforcement program. Inspections must be done at a frequency that is appropriate for the risk to the resource.

Between May 9, 2001, and August 30, 2001, MOF was at the Choelequoy range seven times. Staff noted some problems with cattle trespass, use of salt and fence maintenance. Staff discussed the issues with the complainant and the licensees. Both the complainant and the licensees reported possible non-compliance with the range use plans to MOF. MOF staff followed up with almost two dozen e-mails and phone calls, plus on-site discussions. File notes indicated that MOF staff informed the appropriate parties, discussed the issues and provided direction where required, and that the parties responded.

MOF stated that, given the state of range improvements such as fences, and a lack of natural topographic barriers in the Chilcotin region, it is common for some animals to be in trespass. The decision to take compliance and enforcement action depends on specific circumstances. Measures taken to address non-compliance reflect the impact on range resources, the cooperation shown by the non-complying licensees and the impacts on other licensees. If the impacts are minimal and a licensee is responding to initial compliance measures, further formal enforcement measures may not be necessary. In response to the cattle trespass in this complaint, the licensees inspected the pasture and moved cattle after they were informed by MOF. The licensees spent some time repairing fences. The complainant also responded positively to requests from the MOF, including fence repairs.

Was the level of enforcement adequate in these circumstances? There was some non-compliance, but the effectiveness of enforcement was complicated by a number of factors. It was hard to determine where the cattle were going through or around the fencing. It was also difficult for MOF staff to actually observe the trespass, and to determine whose cattle were trespassing without being on site. The goal of compliance and enforcement of livestock grazing

restrictions is to prevent trespassing animals from harming the range. In this case, some level of trespass was considered to be inevitable given the poor condition of the fences and the topography of the area. MOF stated that the cattle trespass likely contributed to the overuse of the graveyard meadow, but reiterated that one season of overgrazing wasn't significant.

MOF responded promptly to complaints and did not note any conditions warranting increased enforcement action beyond instructions to the licensees and the complainant. The non-compliance did not result in significant environmental impact, although the trespassing cattle made the evaluation of the effects of horse grazing impractical. For these reasons, the Board concludes that MOF adequately monitored grazing, took appropriate enforcement measures to reduce trespass and prevent further harm to the range from overgrazing.

Commentary

This complaint highlighted some problems with MOF administration of range resources. There were delays in approving range use plans and grazing licences before the grazing season began. The complainant and the licensees did not receive copies of the plans and licences until mid summer, several months after grazing had started. As well, MOF assigned fence maintenance amongst the licensees and complainant using e-mail and by phone, without changing the range use plan.

That creates two problems. First, licensees did not have the document to which they were being held accountable. That is risky and administratively unfair. Even though the parties may have had an understanding of their responsibilities, the delay in providing formal documentation governing range use and obligations was unacceptable.

Second, compliance with the approved range use plans was complicated by MOF orally changing terms in the plans, which could have created confusion. For example, if the MOF tried to impose a penalty for not maintaining fences according to the range use plan, a reasonable defence would be that the person reasonably relied upon a government official who led them to believe that they were only responsible for specific fences. The plans can only be legally changed through written agreement signed by the district manager and licensee.

Another problem with documentation was that the range use plans were not very thorough. They contained little more than a grazing schedule. While this is understandable, given that the permit was only good for one year, even range use plans for a short duration should reflect long-term range management objectives. That will soon become even more essential under the *Forest and Range Practices Act*, which bases range management on measurable objectives and strategies.

The Board suggests that the Chilcotin Forest District review its procedures involving range use plans to ensure administrative fairness.

Conclusions

Did grazing and range practices comply with the range use plans?

The licensees did not comply with section 27 of the Code when they allowed cattle to graze prior to approval of the range use plan. The complainant did not comply with section 98 of the Code when she allowed her horses to graze before her grazing licence was approved. However, MOF staff gave oral approval and assessed the range on site prior to grazing. Consequently, the Board concludes that both of those instances of non-compliance were not significant.

The Board also concludes that the adjacent licensees did not comply with section 98 of the Code by allowing livestock to graze in trespass on pasture 3. As well, both the licensees and the complainant failed to comply with the range use plan condition of maintaining fences to contain livestock, although that was complicated by old fences, gravel-filled cattle guards and the fluctuating level of Choelquoit Lake.

The Board concludes that both horses and cattle grazed pasture 3 in 2001. MOF staff noted that horses were congregating on the graveyard meadow and that pasture 3 showed medium levels of use with spots of overgrazing. Although there was overgrazing in spots, the level of use over the entire range was consistent with the range use plan. The Board therefore finds the complainant substantially complied with the grazing requirements of the range use plan, and therefore section 98 of the Code.

Were the requirements of the range use plan enforced by MOF?

The Board concludes that MOF adequately monitored grazing, and took appropriate enforcement measures to reduce trespass and prevent further harm to the range from overgrazing.

